

**ELWYN, INC.****CORPORATE HUMAN RESOURCES**

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**DATE:** 12/10/04

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Sandra S. Cornelius, Ph.D.

*President*

December 10, 20094

TO: President's Committee for Purchase From People  
Who Are Blind or Severely Disabled  
14221 Jefferson Davis Highway  
Jefferson Plaza 2, Suite 10800  
Arlington, VA 22202-3259  
Atten: Mr. John Heyer; Janet Yandik

TO: Ms. Katherine Astrich, Policy Analyst  
Office of Management and Budget  
Office of Information and Regulatory Affairs  
Eisenhower Executive Office Building  
725 - 17<sup>th</sup> Street, N.W.  
Washington, D.C. 20502

FROM: Sandra S. Cornelius, PhD., President of Elwyn, Inc.

On behalf of Elwyn, Inc., we are writing to express our opposition to the proposed notice of rulemaking (Docket No. 2004-01-01) from the President's Committee for Purchase From People Who Are Blind or Severely Disabled. The proposed rulemaking on governance standards for central non-profit agencies and non-profit agencies participating in the Javits-Wagner-O'Day (JWOD) Program exceeds the scope of the Committee's authority and Congressional mandate.

Elwyn, Inc. provides education, vocational, residential and rehabilitation services to disabled persons. Our annual revenues exceed \$200 million. Our primary operation is located outside Philadelphia, PA and subsidiary organizations operate in New Jersey, Delaware and California. We serve about 10,000 individuals through a wide variety of programs.

We have a disciplined Board of Directors and we have intentionally adopted governance standards that address audits, compliance and ethics. Our Board recognizes the need to conduct our affairs with honesty and integrity because it makes good business sense to do so. However, we believe the proposed JWOD rules are misguided, do not advance a legitimate business purpose and are beyond the scope of authority of the Committee.

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The authorizing status for the JWOD program clearly delineates the powers and responsibilities of the Committee (41 CFR 51-22, 41 U.S.C. § 46). These powers and responsibilities do not extend to governance standards or executive compensation. Both Congress and the Internal Revenue Service (IRS) have jurisdiction over these areas. The Committee is mandated with determining which commodities and services should be on the Committee's procurement list and informing federal agencies about the JWOD program.

As a participating JWOD agency, we would hope that the Committee would comply fully with the Congressional intent to provide employment and training opportunities for persons who are blind or have other severe disabilities and not delve into areas for which it lacks both the Congressional and statutory authority necessary to promulgate governance and other standards. The proposed rules will impact the entire community of participating non-profit agencies, despite the Committee's own comment that the overwhelming majority of JWOD affiliates operate in an ethical and accountable manner.

The statutory authority and regulations, as well as the legislative history, in addition to the applicable federal case law, do not support the Committee's actions. Furthermore, we have concerns understanding the rationale for the Committee to purport to assume regulatory authority over the governance standards for non-profit, tax-exempt 501 [c] [3] organizations, because numerous federal entities exist to regulate these organizations.

A review of the legislative history of the JWOD Act reveals specific powers and duties conferred on the Committee – these powers relate to the purpose of the Act. The Committee was not given oversight of corporate governance and executive compensation, and therefore, the proposed rules exceed the Congressional mandate.

The proposed rules raise significant Constitutional concerns. Both non-profit and for-profit agencies regularly compete for government contracts. Non-profits compete against companies as large as Lockheed Martin and Boeing. We have not found other circumstances where the ability to participate in government contracting is contingent upon a certain corporate governance structure of the participating vendor. Similarly, there is not an inquiry into the executive compensation level of the participating agency versus that of the highest paid SES, career Federal government employee for vendors to be permitted to compete for government contracting opportunities. If the proposed rules were to become final, however, only non-profit agencies desiring to participate in the JWOD program would be subject to this unique level of regulation. There is no rationale for such disparate treatment of non-profit organizations desiring to participate in the JWOD program and no precedent for establishing a cap on executive compensation or imposing governance rules as a prerequisite to participation in government contracting.

We suggest that Elwyn is not unlike other large non-profit agencies. JWOD business comprises a small percentage (less than 10%) of our total revenue. Recruiting talent to lead a multi-faceted, multi-divisional company requires flexibility in our compensation program. Salaries are market driven and should not be linked to the federal government's predetermined salary guidelines. The standards proposed will only serve to limit our ability to recruit and retain qualified managers.

Further, the proposed rules require actions that do not relate to effective governance. Specifically, publication for Board minutes serves no useful purpose and will only serve to repress Board activity. This becomes particularly acute in organizations such as ours when JWOD business is very rarely discussed at the Board level.

We believe that the proposed rules do not advance the Congressional intent of the enacting JWOD legislation, and would, if adopted, diminish the program's ability to increase employment opportunities for the blind and disabled. We respectfully request that the Committee withdraw these rules.



Sandra S. Cornelius, PhD; President